

THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

Criminal Revision Case No.3269 of 2017

JUDGMENT:

The present Criminal Revision Case is preferred by the appellant-accused under Sections 397 and 401 of the Criminal Procedure Code, 1973 (for short, 'Cr.P.C.') questioning the conviction recorded under Section 255 (2) of Cr.P.C. for the offence punishable under Section 304-A of Indian Penal Code (I.P.C.) and sentence of simple imprisonment for a period of six months and fine of Rs.500/- (Rupees Five hundred only) with default sentence of simple imprisonment for one month inflicted by the learned V-Additional Judicial Magistrate of First Class, Rajahmundry in C.C. No.405 of 2013, as affirmed by the learned Principal Sessions Judge, Rajamahendravaram, East Godavari District, by his judgment dated 27.11.2017 in Criminal Appeal No.105 of 2016.

2. Heard Sri Kowturu Pavan Kumar, learned counsel for the petitioner and the learned Assistant Public Prosecutor for the State of Andhra Pradesh.

3. Admittedly, the petitioner has been in Central Prison, Rajamahendravaram, East Godavari District, on affirmation of the conviction recorded by the Principal Sessions Judge, Rajamahendravaram, East Godavari District, by his judgment dated 27.11.2017, in Criminal Appeal No.105 of 2016, serving out the sentence.

4. The facts, in brief, are that on 29.3.2013, one Naga Mahalaxmi, who is the deceased in this case, went to Sivalayam located at Narendrapuram Road, Rajanagaram, and while crossing N.H.16 at Narendrapuram, a Lorry bearing No.AP-20-Y-8937 driven in a rash and negligent manner at high speed coming from Rajahmundry dashed her, due to which she was thrown upwards and fell down on the road and sustained bleeding injuries to her lower and upper limbs and also serious injury to her head and when she was shifted to the hospital she succumbed to the injuries while undergoing treatment.

5. On a complaint, a case in Crime No.73 of 2013 under Section 304-A of I.P.C. was registered, investigated into, and on charge-sheet being filed, the learned Magistrate, having followed the due formalities, when examined the accused he pleaded not guilty. The learned Magistrate hence proceeded with the trial. The prosecution examined as many as nine witnesses and marked Exs.P1 to P10. Amongst the witnesses, P.Ws.2 and 3 are the eye-witnesses to the occurrence. P.W.2, incidentally, was present while he was proceeding to Tiffin Centre nearby to the place of incident. P.W.3 owns a shop nearby to the place of accident. Motor Vehicles Inspector was examined and Medical Officer was also examined. Motor Vehicles Inspector's Report is that there were no mechanical defects in the lorry when he inspected it. The Doctor, who conducted

postmortem, opined that the death was due to the accident. The other witnesses are inquest witnesses and investigating officers.

6. The learned Magistrate having analyzed the evidence on record and on appreciation of the evidence found that the evidence of P.Ws.2 and 3 cannot be disbelieved as nothing is brought out in their cross-examination to suspect their presence at the time and place of occurrence. Therefore, believing the testimony of P.Ws.2 and 3, which was corroborated through the medical evidence as to the death of the deceased having taken place due to the accident and also assessing the rough sketch filed, held that the prosecution could prove the charge against the accused beyond all reasonable doubt for the offence punishable under Section 304-A of I.P.C. and convicted him under Section 255 (2) of Cr.P.C. and sentenced him to undergo simple imprisonment for a period of six months and to pay fine of Rs.500/- in default to suffer simple imprisonment for a period of one month.

7. When the revision petitioner approached the Principal Sessions Judge, Rajamahendravaram, East Godavari District, by preferring Criminal Appeal No.105 of 2016, the learned Sessions Judge once again re-assessed the evidence on record and has not taken a different opinion as the evidence of P.Ws.2 and 3 was found to be clinching enough to prove rash and negligent driving on the part of the revision petitioner-accused and identity of the revision petitioner as having been proved through the evidence of P.Ws.2 and 3 as there is

nothing to suspect that P.Ws.2 and 3 were speaking falsehood to implicate the revision petitioner-accused and even referring to the evidence of the medical officer (P.W.7) and the Motor Vehicles Inspector (P.W.5) affirmed the conviction and also sentence of imprisonment inflicted on the revision petitioner, including fine amount with default sentence.

8. The learned counsel for the revision petitioner would submit that the evidence of witnesses P.Ws.2 and 3 is mutually inconsistent and contradictory which the Courts below did not properly appreciate and thus in the absence of cogent evidence alleging that the crime lorry was moving speedily and caused the accident the Courts below were not right in recording the conviction and sentencing the revision petitioner.

9. A perusal of the findings recorded by the Courts below and the material on record would clearly reveal that the testimony of P.Ws.2 and 3 cannot at all be discredited. Their evidence would prove two important aspects, the first being, identity of the revision petitioner as the driver of the lorry, and, second, rash and negligent driving on the part of the lorry driver. The very manner in which the accident occurred reflecting that the deceased was dragged to some distance after she was hit by the lorry and the lorry was stopped at some distance and, thereafter, the driver and cleaner got down from the lorry and fled away from the place of occurrence is sufficient enough to view the rash and negligent driving on the part of the

revision petitioner. The identity of the revision petitioner cannot be doubted as there was ample time for both P.Ws.2 and 3 to identify him.

10. This apart, the evidence of Motor Vehicles Inspector would also clearly show that he did not find any mechanical defect when he inspected the vehicle at the requisition of the investigating officer.

11. The medical officer's evidence also proves that the death of the deceased was due to road accident.

12. Therefore, nothing more is required to arrive at the conclusion and that there is no merit in the present Criminal Revision Case and, accordingly, the same is dismissed confirming the conviction recorded against the revision petitioner-accused by the learned V-Additional Judicial Magistrate of First Class, Rajahmundry in C.C. No.405 of 2013, as affirmed by the learned Principal Sessions Judge, Rajamahendravaram, East Godavari District, in Criminal Appeal No.105 of 2016, under Section 255 (2) of Cr.P.C. for the offence punishable under Section 304-A of I.P.C.

Concerning the sentence of simple imprisonment of six months inflicted against the petitioner-accused by the learned V-Additional Judicial Magistrate of First Class, Rajahmundry, as affirmed by the learned Principal Sessions Judge, Rajamahendravaram, East Godavari District cannot be viewed as severe in nature. Therefore, even the

sentence of imprisonment inflicted on the petitioner is also maintained, including fine of Rs.500/- ordered to be paid by the revision petitioner-accused.

As a sequel there to miscellaneous petitions, if any, pending in the present Criminal Revision Case shall stand closed.

A. SHANKAR NARAYANA, J

December 19, 2017.

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